



DELTA STEWARDSHIP COUNCIL

A California State Agency

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555 E. Weber Avenue
Stockton, CA 95202

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Dear Mr. Hoyt:

We have reviewed the San Joaquin County Council of Governments' (SICOG) Notice of Preparation (NOP) for the 2014 Regional Transportation Plan (RTP) Program Draft Environmental Impact Report (EIR) and we understand that the RTP will include a Sustainable Communities Strategy (SCS). We welcome the opportunity to provide input regarding how to ensure the consistency of the RTP/SCS with the Delta Plan. Because the Delta Plan has not yet been adopted¹, our comments are based on the current draft Delta Plan (November 2012). We appreciate the opportunity to comment on the NOP and look forward to continued coordination between our agencies to further our related efforts. We are particularly interested in working with you to determine how the exemption process (for "covered actions") defined in Water Code 85057.5 should work.

As you may know, in 2009 the California Legislature created the Delta Stewardship Council (DSC) to play a synthesizing and coordinating role among the many agencies and interest groups who have a stake in the Delta's future. The DSC was also tasked with developing, adopting and implementing the Delta Plan. The Delta Plan, once adopted, will be an enforceable plan to further the achievement of the coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals are to be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.

The DSC sets state policy for the Delta through the Delta Plan and coordinates state and local agencies to achieve policy objectives. In addition, the Council was granted specific regulatory and appellate authority over certain actions that take place in whole or in part in the Delta. To do this, the Delta Plan contains a set of regulatory policies with which State and local agencies are required to comply. The Delta Reform Act specifically established a certification process for compliance with the Delta Plan. This means that state and local agencies that propose to carry out, approve, or fund a qualifying action in whole or in part in the Delta, called a "covered action," must certify that this covered action is consistent with the Delta Plan and must file a certificate of consistency with the Council that includes detailed findings.

It is important to note that not all actions that occur in whole or in part in the Delta are covered actions. Only certain activities qualify as covered actions, and the Delta Reform Act establishes specific criteria and exclusions. One of these exclusions is for actions within the secondary zone of the Delta that a metropolitan planning organization determines are consistent with its SCS. Such proposed actions are *not* "covered actions" regulated by the DSC. Water Code Section 85057.5(b)(4) states:

¹ The Delta Plan is anticipated to be adopted in May 2013.

"Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place."

"Covered action" does not include any of the following: ...Any plan, program, project, or activity within the secondary zone of the Delta that the applicable metropolitan planning organization under Section 65080 of the Government Code has determined is consistent with either a sustainable communities strategy or an alternative planning strategy that the State Air Resources Board has determined would, if implemented, achieve the greenhouse gas emission reduction targets established by that board pursuant to subparagraph (A) of paragraph (2) of subdivision (b) of Section 65080 of the Government Code. For purposes of this paragraph, "consistent with" means consistent with the use designation, density, building intensity, transportation plan, and applicable policies specified for the area in the sustainable communities strategy or the alternative planning strategy, as applicable, and any infrastructure necessary to support the plan, program, project, or activity.

The ability to exempt certain actions from the DSC's certification process provides SJCOG with a potentially significant role in shaping how development occurs in the secondary zone of the Delta and the way in which planning for metropolitan areas and the Delta are coordinated.

Pursuant to Water Code Section 85212, the DSC will be required to review the SJCOG RTP/SCS for consistency with Delta Plan. The law states:

The council shall review and provide timely advice to local and regional planning agencies regarding the consistency of local and regional planning documents, including sustainable communities strategies and alternative planning strategies prepared pursuant to Section 65080 of the Government Code, with the Delta Plan. The council's input shall include, but not be limited to, reviewing the consistency of local and regional planning documents with the ecosystem restoration needs of the Delta and reviewing whether the lands set aside for natural resource protection are sufficient to meet the Delta's ecosystem needs. A metropolitan planning organization preparing a regional transportation plan under Section 65080 of the Government Code that includes land within the primary or secondary zones of the Delta shall consult with the council early in the planning process regarding the issues and policy choices relating to the council's advice. No later than 60 days prior to the adoption of a final regional transportation plan, the metropolitan planning organization shall provide the council with a draft sustainable communities strategy and an alternative planning strategy, if any. Concurrently, the metropolitan planning organization shall provide notice of its submission to the council in the same manner in which agencies file a certificate of consistency pursuant to Section 85225. If the council concludes that the draft sustainable communities strategy or alternative planning strategy is inconsistent with the Delta Plan, the council shall provide written notice of the claimed inconsistency to the metropolitan planning organization no later than 30 days prior to the adoption of the final regional transportation plan. If the council provides timely notice of a claimed inconsistency, the metropolitan planning organization's adoption of the final regional transportation plan shall include a detailed response to the council's notice.

The DSC staff appreciates this opportunity for review in order to outline some of the issues of concern to the Council. Based on the most recent draft of the Delta Plan (November 2012), our review of the NOP for the RTP/SCS identified the following areas to consider in order to ensure consistency:

- **Urban boundaries.** The urban boundaries identified in the RTP/SCS should be consistent with the Delta Plan. The boundaries are described in draft Delta Plan Policy DP P1 (with reference to maps in Figure 5-2 and Appendix K). These boundaries are intended to strengthen existing Delta communities while protecting farmland and open space, providing land for ecosystem restoration needs, and reducing flood risk. DP P1 is based on city boundaries and spheres of influence effective as of the date of the Delta Plan's adoption.
- **Habitat restoration areas.** Land should be set aside for future habitat restoration needs, including the San Joaquin Multi Species Conservation Plan, consistent with the priority habitat restoration areas in the Delta Plan. Draft Delta Plan Policy ER P3 calls for protecting opportunities to restore habitat in these

areas, which are depicted in Figure 4-6. At the same time, draft Delta Plan Policy DP P2 calls for respecting local land use when siting water or flood facilities or habitat restoration. For this reason, the priority habitat restoration areas are located in areas not currently designated for urban uses, but rather for agriculture, open space or natural preserve in county general plans.

- **Flood risk reduction.** Land use planning for the RTP/SCS should reduce flood risk. The draft Delta Plan contains three policies that are most relevant to SJCOG's consideration of this issue: Policy RR P2 requires flood protection for residential development in rural areas, Policy RR P3 restrict encroachment in floodways, and Policy RR P4 restricts encroachments in floodplains. In addition, the draft Delta Plan contains a recommendation (RR R4) supporting funding and implementation of the San Joaquin River Flood Bypass, and a recommendation (RR R6) encouraging the Central Valley Flood Protection Board to evaluate designating additional floodways. Flood risk reduction should be included as a factor when evaluating various land use scenarios.

In reviewing the NOP we have identified a need for ongoing and close coordination between our agencies due to the timing of updates required of both plans and the planning periods. While the RTP/SCS is updated every four years and the DSC is required to update the Delta Plan at least every five years, the planning horizon for the two plans are quite different. The Delta Plan has a planning period through 2100 in comparison to the current RTP/SCS which plans through 2040.

We have the following additional recommendations regarding ways in which the RTP/SCS could further promote the achievement of the coequal goals.

- **Water supply reliability.** The RTP/SCS should address the Delta Plan's goal of improving water supply reliability. The draft Delta Plan's legally binding policies and most of its recommendations related to water supply reliability are directed primarily at water suppliers and state and federal agencies. However, there is strong evidence that compact growth reduces per capita water demand, as well as water supply infrastructure costs,² and we therefore request that these environmental and economic benefits be included as factors in the evaluation of land use scenarios. In addition, we note that water use efficiency is one of several criteria required for "transit priority projects" as defined by SB 375 to obtain an exemption from the requirements of the California Environmental Quality Act (CEQA).³
- **Protecting the Delta as Place.** The RTP/SCS should contribute to protecting and enhancing the unique cultural, recreational, natural resource, and agricultural values of the Delta. Several recommendations in the draft Delta Plan provide guidance in this area. DP R5 recommends providing adequate infrastructure to meet development needs, consistent with sustainable communities strategies and other relevant plans. DP R8 and DP R9 call for promoting value-added crop processing and agritourism, respectively. DP R17 calls for enhancing opportunities for visitor-serving businesses. DP R18 calls for the Ports of Stockton and West Sacramento to encourage carefully designed and sited development of port facilities.

We look forward to working with you and your staff to ensure consistency between the RTP/SCS and the Delta Plan, so that the two plans are complementary and serve to protect the Delta while promoting sustainable growth and economic vitality in the broader region.

² U.S. Environmental Protection Agency. 2006. *Growing Toward More Efficient Water Use: Linking Development, Infrastructure, and Drinking Water Policies*. EPA 230-R-06-001. Downloaded on March 5, 2013 from http://www.epa.gov/smartgrowth/pdf/growing_water_use_efficiency.pdf.

³ SB 375 provides a total CEQA exemption for transit priority projects that comply with a long list of criteria, including having buildings and landscaping that are 25% more water efficient than average for the community.

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If you have any questions, please contact Jessica Davenport at jdavenport@deltacouncil.ca.gov or (916) 445-2168.

Sincerely,



Cindy Messer
Deputy Executive Officer, Delta Plan

cc: Phil Isenberg, Chair, DSC
DSC Council Members
Chris Knopp, Executive Officer
Dan Ray, Chief Deputy Executive Officer